

CONFIDENTIAL

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RE: PHILLIP D. KLINE  
Case No. DA 10,088

RECEIVED

INVESTIGATIVE REPORT

MAY 29 2008

I. NATURE OF THE COMPLAINT

DISCIPLINARY  
ADMINISTRATOR

On November 10, 2006, Complainant Dan Monnat submitted a copy of the Petition for Writ of Mandamus, Case No. 06-97554-S, and the supporting memorandum to the Disciplinary Administrator's Office alleging potential violations of the rule of Professional conduct by Respondent Attorney General Phill Kline.

On November 30, 2006, Complainant Carol Green, Clerk of Appellate Courts, submitted the same Petition for Writ of Mandamus and supporting memorandum to the Disciplinary Administrators Office. She also has submitted the Attorney General's Response and supporting memorandum. She requested, on behalf of the Supreme Court, that the documents be investigated and considered for possible violation of the Kansas rules of Professional Conduct.

On March 12, 2007, Complainants Lee Thompson, Erin Thompson, Laura Shaneyfelt, Dan Monnat, Robert Eye and Pedro Irigonegaray submitted clarification on the nature of the allegations against Respondent Kline. Their allegations include:

- 1) Kline filed criminal charges in Sedgwick county and obtained a probable cause affidavit based on falsified evidence in violation of KRPC 3.3, 3.4 and 8.2;
- 2) Kline filed criminal charges in Sedgwick county based on a probable cause affidavit which failed to disclose that the officials given statutory authority for creating and administering abortion reporting forms testified that Dr. Tiller's conduct complied with the law; all in violation of KRPC 3.3;

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- 3) Kline has continuously engaged in conduct that he reasonably should have known would have a substantial likelihood of materially prejudicing an adjudicative proceeding in violation of KRPC 3.6;
- 4) Kline continuously engaged in misconduct by making fraudulent representations about the case in violation of KRPC 8.4;
- 5) Kline repeatedly asserted that he was investigating "failure to report child rape"; notwithstanding that he possesses no evidence to support even a suspicion of such conduct; indeed at certain points had evidence showing the allegations to be false; all in violations of KRPC 3.3, 3.6, 3.8 and 8.4;
- 6) Kline repeatedly stated he never sought the names of adult women in the investigation. (This simply is not true;)
- 7) After publicly expressing opinions regarding Dr. Tiller's culpability, Kline refused to recognize and admit a conflict of interest in violation of KRPC 3.8;
- 8) Kline violated orders contrary to KRPC 8.4.

## **II. SCOPE OF THE INVESTIGATION**

### **INTERVIEWS:**

The investigators received and reviewed documents provided by Complainants, by Respondent and by attorneys on behalf of Respondent. Investigators spoke with Attorney General Phill Kline, Assistant Attorney General Steve Maxwell, Deputy Attorney General Eric Rucker and Assistant Attorney General Brad Burke. In addition, Lucky DeFries spoke with Lee Thompson. Both investigators spoke at length with Judge Richard Anderson, who provided relevant documents to the Disciplinary Administrator's Office which were in turn forwarded to us.

### **DOCUMENTS REVIEWED:**

September 21, 2004 Subpoena Duces Tecum requiring production of medical records.

Transcript of October 5, 2004 hearing, *In Re Inquisition*, 04-IQ-3.

October 21, 2004 Memorandum Decision and Order, *In Re Inquisition*, 04-IQ-3.

May 10, 2005 Motion for Clarification, *In re Inquisition*, 04-IQ-3, filed by Office of Attorney General.

May 25, 2005 Letter Decision by Judge Richard Anderson, *In re Inquisition*, 04-IQ-3 on Motion for Clarification/Contempt.

Portion of September 8, 2005 transcript of Oral Arguments *Alpha Medical Clinic v. Anderson*, Case No 04-933383-S.

Portion of February 3, 2006 transcript of Phill Kline's testimony in *Aid for Women v. Foulston*, 03-1353-JTM.

February 3, 2006 Order in *Alpha Medical Clinic v. Anderson*, Case No 04-933383-S.

February 3, 2006 press release from Phill Kline.

April 18, 2006 Memorandum Opinion and Order, *Aid for Women v. Foulston*, 03-1353-JTM.

May 23, 2006 Amended Protective Order, *In Re Inquisition*, 04-IQ-3.

September 11, 2006 news article on four-page August 8, 2006 memo by Phill Kline released to media anonymously.

September 16, 2006 news article attributed statements to Kline and Clinic's attorneys.

September 29, 2006 news article.

October 6, 2006 Press Release for Phill Kline and attached summary of Supreme Court decision.

October 19, 2006 Joint Motion for Order Directing Attorney General Kline to Show Cause Why He Should Not be Held in Contempt of Court, *In Re Inquisition*, 04-IQ-3, filed by Pedro Irigonegaray, Robert Eye, Elizabeth Herbert, Lee Thompson, Eric Thompson, Daniel Monnat, Douglas Ghertner, Roger Evans and Helene Krasnoff.

October 3, 2006 news article.

October 4, 2006 news article.

October 9, 2006 press release by Phill Kline with attached summary of Supreme Court's decision in *Alpha Medical Clinic v. Anderson*, 280 Kan. 903 (2006).

November 1, 2006 news article stating that Kline received records of 90 patients from two abortion clinics.

November 1, 2006 Motion to Disqualify Office of Attorney General and for the Appointment of a Special Prosecutor in the Subject Investigation and Proceeding, *In Re Inquisition*, 04-IQ-3, filed by Irigonegaray, Eye, Lee Thompson, Erin Thompson, Monnat, and Shaneyfelt,

November 1, 2006 Motion to Lift Order Sealing Portion of Court File and Proceedings and Motion for Immediate Hearing (on Motion to Disqualify Office of Attorney General), *In Re Inquisition*, 04-IQ-3, filed by Irigonegaray, Eye, Lee Thompson, Erin Thompson, Monnat, and Shaneyfelt,

November 2, 2006 letter from Judge Anderson to counsel, *In Re Inquisition*, 04-IQ-03.

November 3, 2006 letter from Judge Anderson to counsel, *In Re Inquisition*, 04-IQ-03.

Transcript of Phill Kline's November 3, 2006 appearance on The O'Reilly Factor.

November 6, 2006 Petition for Writ of Mandamus, *Women's Health Care Services, P.A. v. Kline*, Case No. 06-97554-S, with supporting memorandum, filed by Irigonegaray, Lee Thompson, Erin Thompson, Monnat, Shaneyfelt, Douglas Ghertner and Roger Evans.

Transcript of November 17, 2006 District Court hearing on motion for order to show cause why Phill Kline should not be held in contempt

Transcript of November 20, 2006 District Court hearing on motion for order to show cause why Phill Kline should not be held in contempt, *In Re Inquisition*, 04-IQ-03.

November 27, 2006 Response to Petition for Writ of Mandamus, *Women's Health Care Services, P.A. v. Kline*, Case No. 06-97554-S, with supporting memorandum, filed by Steven Maxwell, Office of the Kansas Attorney General Phill Kline.

November 27, 2006 Response to Petition for Mandamus, *Women's Health Care Services, P.A. v. Kline*, Case No. 06-97554-S, filed by Respondent Richard D. Anderson, District Judge.

November 27, 2006 Additional Response to Petition for Mandamus, *Women's Health Care Services, P.A. v. Kline*, Case No. 06-97554-S, by Respondent Richard D. Anderson, District Judge.

November 30, 2006 Order denying Petition for Writ of Mandamus and Emergency Order to Stay Inquisition, *Women's Health Care Services, P.A. v. Anderson*, Case No. 06-97554-S.

November 30, 2006 press release by Attorney General Phill Kline.

December 21, 2006 Memorandum and Order, *In Re Inquisition*, 04-IQ-03.

December 21, 2006, Complaint/Information, State of Kansas v. Tiller, 06-CR-2961, District Court Sedgwick County and attached December 20, 2006 Affidavit of Thomas D. Williams, Special Agent , Office of Kansas Attorney General.

Portion of sworn statement of Lorne Archer Phillips, Case No. 06-CR-2961.

December 22, 2006, Journal Entry of Dismissal, State of Kansas v. Tiller, 06-CR-2961, District Court Sedgwick County.

December 27, 2006 press release from Attorney General Phill Kline.

January 20, 2007 press release from District Attorney Nola Foulston.

February 15, 2007 news article quoting Kline re: dismissal of 06-CR-2961.

February 16, 2007 news article regarding email from Kline to supporters.

March 5, 2007 letter from Judge Anderson to Stan Hazlett

March 12, 2007 letter to Investigator Lucky DeFries from Lee Thompson, Erin Thompson, Shaneyfelt, Monnat, Eye and Irigonegaray.

Transcript of Phill Kline's speech at BLOGS4LIFE Spring Conference, January 28, 2007.

Letter from Caleb Stegall dated December 28, 2007 (attorney for Phill Kline) in response to a letter from Lucky DeFries dated October 19, 2007, requesting a response to six questions identified as part of conversations with the Disciplinary Administrator's Office.

### **III. FINDINGS OF FACT**

On October 29, 2003, Attorney General Phill Kline opened an Inquisition, Case No. 04-IQ-3. (*In Re Inquisition*, 04-IQ-3, 5-25-05 Letter Decision, p. 2).

On September 21, 2004, the Office of the Attorney General subpoenaed the unredacted files of 90 women and girls who obtained abortions at Women's Health Care Services, P.A. and Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. (*In Re Inquisition*, 04-IQ-3, 5-25-05 Letter Decision, p. 2 and *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 906 (2006)).

October 5, 2004, Judge Anderson held a hearing on the clinics' motion to quash the subpoenas. (*Alpha Medical Clinic v. Anderson*, 280 Kan. at 906).

October 21, 2004, Judge Anderson issued an Order requiring the clinics to produce the 90 unredacted patient files by October 28, 2004. (*Alpha Medical Clinic v. Anderson*, 280 Kan. at 907).

On October 26, 2004, the clinics, calling themselves Alpha Medical Clinic and Beta Medical Clinic, filed a Petition for Writ of Mandamus in *Alpha Medical Clinic v. Anderson*, Case No. 04-93383-S. Complainants Lee Thompson, Erin Thompson, Laura Shaneyfelt, Dan Monnat, Robert Eye and Pedro Irigonegaray are legal representatives for Women's Health Care Services, P.A. and Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. (*Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 906 (2006)).

February 22, 2005, the Clinics filed a brief in *Alpha Medical Clinic v. Anderson*, Case No. 04-93383-S. The brief was a public document making the existence of the Inquisition public knowledge.

Judge Richard Anderson's Letter Decision dated May 25, 2005, *In Re Inquisition*, 04-IQ-3 found that: "At all times, the Attorney General's officers have acknowledged that the privacy interests of patients should be protected" and that "only information

necessary to evaluating the legal issues should be produced.” (Letter Decision, pp. 3 - 4). The Court also found that the Office of the Attorney General did not violate the Court's previous Nondisclosure Order because when the parties filed their public briefs in the Mandamus action before the Supreme Court, the fact of the inquisition became public and because the transcript the AG attached to his brief contained “no specific references to patient identities or any medical facts concerning any identified patient.” (Letter Decision, p. 4). Judge Anderson concluded by stating: “the Attorney General shall be relieved from the continuing operation of the nondisclosure provision concerning the existence of the investigation and subpoena.” (Letter Decision, p. 5).

On February 3, 2006, the Supreme Court granted the Petition for Writ of Mandamus, requiring Judge Anderson to determine if the Attorney General is on firm legal ground and to issue a protective order requiring the redaction of patient information from subpoenaed records. (*Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 924 (2006)). The Court also refused to hold Attorney General in contempt for attaching redacted portion of the October 5, 2004 district court hearing transcript and October 21, 2004 District Court Memorandum and Order to his brief and for his comments in a press conference. *Id.* at 926 and 929.

On May 23, 2006, Judge Anderson issued an Amended Protective Order in *In Re Inquisition*, 04-IQ-3).

On October 24, 2006, the district court turned redacted medical records over to Office of Attorney General.

After reviewing the Attorney General's legal theories and the subpoenaed medical records, Judge Anderson determined that the Attorney General stands “on firm



legal ground in advancing his theory that the clinics have failed to comply with K.S.A. 65-6703(b)(2) and K.S.A. 65-6703(b)(3)." (Response to Mandamus by Judge Anderson, Nov. 27, 2006, p. 1. See also, Additional Response to Mandamus by Judge Anderson, Nov. 27, 2006, pp. 5 – 6).

Following Mr. Kline's November 3, 2006 appearance on the O'Reilly Factor, Judge Anderson conducted a hearing and determined "it does not appear that any medical records or identifiable patient information was given to Mr. O'Reilly." However, he stated "this should not be viewed as the Court's approval of the improvident judgment of Mr. Kline in allowing himself to be used as a foil in a hoax by Bill O'Reilly." (Additional Response to Mandamus by Judge Anderson, Nov. 27, 2006, p. 13).

Judge Anderson concluded: "The law enforcement objectives at the heart of this proceeding have been harmed at least to the extent there has been an interruption of the criminal investigation and the dignity of the Court has unnecessarily been called into question." (Additional Response to Mandamus by Judge Anderson, Nov. 27, 2006, p. 13, emphasis added).

Judge Anderson concluded that Phill Kline should not be held in contempt of court for comments made in his October 9, 2006 Press Release, in a private campaign memorandum to staff released without authorization or statements made during televised political debate in Wichita on October 10, 2006. (Memorandum and Order, Dec. 21, 2006, pp. 1 – 2). The court stated that despite admonitions, "the parties and their political allies each appear to have participated (either directly or indirectly) in vigorous political debate leading up to the election. . . . The Attorney General Elect has commented numerous times about the investigation, even though he personally knew

nothing about its merits. Whether any prejudice can ever be attributed to any campaign rhetoric is purely speculative." (Memorandum and Order, Dec. 21, 2006, p. 2).

December 21, 2006, Attorney General Phill Kline filed criminal charges against Dr. George Tiller. (Complaint/Information, State of Kansas v. Tiller, 06-CR-2961, District Court Sedgwick County).

December 22, 2006, Sedgwick County District Court Judge Clark dismissed charges against Dr. George Tiller at the request of Sedgwick County District Attorney Nola Foulston. (December 22, 2006, Journal Entry of Dismissal, *State of Kansas v. Tiller*, 06-CR-2961).

February 14, 2007, Kansas Supreme Court granted Attorney General Morrison's request to dismiss the appeal of Judge Clark's dismissal of the charges against George Tiller.

#### IV. RULES APPLICABLE TO THE COMPLAINT

K.P.P.C. 3.3 states:

- (a) A lawyer shall not knowingly:
  - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

K.P.P.C. 3.4 states:

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

K.P.P.C. 3.6 states:

- (a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
- (b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement related to:
  - (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
  - (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
  - (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
  - (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
  - (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or
  - (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- (c) Notwithstanding paragraph (a) and (b)(1-5), a lawyer involved in the investigation or litigation of a matter may state without elaboration:
  - (1) the general nature of the claim or defense;
  - (2) the information contained in a public record;

- (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case:
  - (i) the identity, residence, occupation and family status of the accused;
  - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
  - (iii) the fact, time and place of arrest; and
  - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

K.P.P.C. 3.8 states:

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

K.P.P.C. 8.2 states:

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

K.P.P.C. 8.4 states:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

#### **V. OPINIONS AND RECOMMENDATIONS OF THE INVESTIGATORS**

After reviewing the substantial documentation in this case, it is the opinion of these investigators that there is not probable cause to prove that Phill Kline violated any of the rules of ethics. In arriving at this opinion, investigators give particular weight to the findings made by Judge Anderson, including his finding that Attorney General Phill Kline stands "on firm legal ground in advancing his theory that the clinics have failed to comply with K.S.A. 65-6703(b)(2)." In addition, the Court found that Phill Kline did not violate the court's nondisclosure rule and refused to hold Mr. Kline in contempt of court.

The Sedgwick County case was dismissed for jurisdictional reasons, not for lack of probable cause.

This Complaint arises from strenuous legal battles between opposing counsel and was complicated by a very hotly-contested political race. Certainly, it appears that attorneys on all sides took strong stances and used the media, at times, to explain and/or support their positions. However, investigators find no probable cause to believe that Phill Kline's actions violated any rule of ethics.

#### **VI. SPECIFIC QUESTIONS SUBMITTED TO RESPONDENT KLINE**

Following a review of all of the various issues associated with this Complaint, the Disciplinary Administrator's Office identified five specific questions which it wanted

Respondent Kline to specifically respond to. Consequently, by a letter from S. Lucky DeFries dated October 19, 2007, those questions were set forth with a request that Respondent Kline respond in writing. On December 28, 2007, a letter was received from Caleb Stegall, attorney at law, who responded on behalf of Respondent Kline.

Many of the issues addressed as part of the October 19, 2007, letter have already been addressed in the recommendations made above, but because these specific questions were posed to Respondent Kline, the Investigators are providing additional recommendations with respect to the questions posed in the October 19 letter.

#### **VII. OPINIONS AND RECOMMENDATIONS OF THE INVESTIGATORS WITH RESPECT TO THOSE ISSUES ADDRESSED IN THE OCTOBER 19, 2007, LETTER**

Our opinions and recommendations will be discussed in the context of the specific questions posed within the October 19, 2007, letter.

1. Sought a response with respect to Complaint 3 beginning at page 8 with regard to instances set forth in the letter where it was alleged that Respondent Kline had violated KRPC 3.6 with respect to trial publicity.

With respect to whether any of the statements referenced by the Complainants violated Rule 3.6 with respect to trial publicity, the Investigators carefully reviewed Rule 3.6 and in particular the comment to the Rule. The comment discusses at length the difficulty encountered when one is attempting to strike the balance between protecting the right to a fair trial and safeguarding the right of free expression. And as was pointed out in the Response provided on behalf of the Respondent, the context of this investigation involved statements occurring against the backdrop "of an

extremely important public policy debate between and among publicly elected government officials and/or persons standing for election to public office.”

There were several statements which were referenced by the Complainants. These will be addressed individually as part of this discussion. The specific statements referenced by the Complainant were as follows:

- a. It was alleged that Respondent Kline told a news reporter that he had the 90 records and that those records were being reviewed for possible crimes. Even if such a statement was made, we do not believe that it violates Rule 3.6 or created any risk of prejudice.
- b. It was alleged that Respondent Kline issued a press release after the Alpha Beta decision which summarized that decision as a “win” for the Attorney General. As was pointed out by the Response provided on behalf of Respondent Kline, the statement was made by the Kansas Attorney General regarding the substance of a decision of the Kansas Supreme Court which was part of the public record. We do not believe that Rule 3.6 precludes someone in the Respondent’s position from publicly discussing a decision by the Kansas Supreme Court. In fact, we would tend to agree with the Response provided on behalf of Respondent Kline that given his position, he would have had a duty to discuss the decision in some fashion. We do not believe that any prejudice resulted from any statement made by the Respondent regarding the characterization that the decision by the Supreme Court was a “win.” The clinics had sought to prevent the lower Court from obtaining the records.

In fact, the Court did require the clinics to turn over the records, which would seem to be a win for the Attorney General's Office.

We do not believe any of the statements referenced here constitute a violation of Rule 3.6.

- c. It was alleged that Respondent Kline's public statements that he never sought to obtain records containing the records of adult women were untrue. We believe the record supports the notion that Respondent Kline did not seek the identities of adult women. Attorney General Kline's office had previously discussed a protective order with Judge Anderson which would have contemplated that the names of the women would have been redacted prior to the records being turned over to the Attorney General's Office, and as pointed out by the Response on behalf of the Respondent, the subpoenas sought "did direct the unredacted records to be turned over to the Court." And as further pointed out by Respondent's Response, "Having the unredacted records turned over to the Court is not evidence that A.G. Kline sought the unredacted records, because in fact he had already arranged with the Court to a plan of redaction." For these reasons, we are unable to identify a basis for a finding of probable cause with respect to Rule 3.6.
- d. It was alleged that Attorney General Kline publicly discussed the alleged crimes "in ways calculated to inflame public opinion" by calling them "child rape" and illegal "partial birth abortion."



While as indicated previously, there was a vigorous public debate going on with respect to the issues being discussed herein, we do not believe that the statements referenced herein were prejudicial. It would appear that the statements made by Respondent Kline were attempts to characterize the nature of the crimes which the Attorney General's Office believed had been committed. It should also be kept in mind that the District Court had found that there was probable cause to believe that crimes had been committed. As the Response to the questions states, even if the statements could be considered prejudicial, it is very possible that Rule 3.6 contemplates that the statements regarding the crimes which the Attorney General's Office believed were being committed would have enjoyed immunity pursuant to the Rule.

- e. It is alleged that Attorney General Kline's use of the term "Tiller's blood money" was prejudicial.

As the Response points out, Dr. Tiller "injected himself into the political process by raising money to support A.G. Kline's political opponent." While the extent of Dr. Tiller's involvement in the political process is beyond the scope of this investigation, there seems to be little question but that Dr. Tiller or organizations with which he was closely aligned, took an active role in the race for Attorney General. We do not believe that statements made by the Respondent with respect to the political activity of Dr. Tiller could be considered prejudicial pursuant to Rule 3.6.

- f. It is alleged that Attorney General Kline's testimony in a federal case violated Rule 3.6.

We agree with the Respondent that Rule 3.6 only applies to "extrajudicial statements" and, as the Respondent points out, testimony in a federal case would not be viewed as an "extrajudicial statement." For that reason, we find no violation to Rule 3.6.

- g. It is alleged that after the charges against Tiller were dismissed, statements by then District Attorney Kline were prejudicial.

We do not believe that the alleged statements meet the threshold necessary for establishing prejudice pursuant to Rule 3.6. As pointed out by the Respondent, most of the alleged statements related to information within the Tiller complaint itself, which was part of the public record and, as a consequence, immune from the limitations of Rule 3.6. Furthermore, as the Respondent points out, it would appear that Rule 3.6 no longer applied since the charges being referred to had been dismissed.

2. Respondent Kline was asked to respond to the allegations that he falsely stated that prosecutions had resulted from the inquisition.

Prosecutions had in fact resulted from the inquisition. Some of those prosecutions related to the live birth records. As pointed out by the Respondent, "The inquisition was not limited in scope by the investigation of the clinics, nor is the evidence obtained therein limited by the clinic records." As pointed out by the Respondent, the Complainants do not offer any specific evidence to support the notion that no prosecutions resulted from the

inquisition. In fact, as the Respondent points out, the Complainants themselves have been prosecuted and are being prosecuted due to the inquisition. For that reason, we find no basis for a conclusion that probable cause exists to believe that the disciplinary rules have been violated.

3. Respondent Kline was asked to respond to the allegations that he made false statements concerning Tiller's failure to report crimes against children.

As pointed out by the Respondent, they believe that the Attorney General's Office did, in fact, have probable cause to believe that failure to report was occurring, since as they discuss in their response, Judge Anderson had specifically found probable cause to believe that failure to report was occurring.

As the Respondent points out, the records which the Complainants were concerned about represented only some of the evidence at issue in these cases. As the Respondent also points out, the probable cause finding was made before the records were even subpoenaed. The Complainants should have been aware of this fact. As the Respondent points out, the probable cause finding was made entirely independent of what was contained in the records. As the Respondent further points out, the records were the "fruit of the probable cause finding, not the basis of that finding."

Based on our review of all of the information, we do not believe that the Complainants have provided evidence to support their claims of an ethical violation with respect to the subject statements.

4. Respondent Kline was asked to respond to the allegations that he falsely stated that he never sought the identity of adult women.

This issue was discussed above, and as indicated previously, we do not believe that the Complainants have established that any false statements were made.

5. Respondent Kline was asked to respond to the allegations concerning his appearance on The O'Reilly Factor.

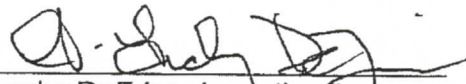
Specifically, Respondent Kline was asked to confirm that neither he nor anyone in his office ever provided any records to The O'Reilly Factor. As part of his Response, his attorney did respond in writing to the effect that neither the Respondent nor anyone within his office had provided records to The O'Reilly Factor. The Respondent was also asked to respond to the statement by the Supreme Court to the effect that "We caution all parties to resist any impulse to further publicize their respective legal positions which may imperil the privacy of the patients and the law enforcement objectives at the heart of this proceeding." While many would probably agree that the appearance on The O'Reilly Factor and the statements made during that appearance did not reflect good judgment (a conclusion reached by Judge Anderson), we do not believe that any statements made on The O'Reilly Factor "imperiled the privacy of the patients" or jeopardized the "law enforcement objectives at the heart of the proceedings." As has been discussed previously, much of the conversation which was taking place with respect to these issues was in the context of both a national debate and a political race here in Kansas. In the

final analysis, we believe the Court was attempting to make certain that the privacy of the patients was maintained and that any law enforcement objectives were not compromised. We do not believe that any statements made on The O'Reilly Factor rise to the level of establishing the probable cause necessary to find that any of the disciplinary rules have been violated.

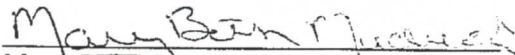
The Investigators spent approximately 55 hours on investigating this matter and preparing this report.

Dated May 21, 2008.

Respectfully submitted,



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